

Senator Todd Weiler proposes the following substitute bill:

ADOPTION ACT AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Brad R. Wilson

LONG TITLE

General Description:

This bill amends provisions of Title 78B, Chapter 6, Part 1, Utah Adoption Act, relating to the rights and obligations of individuals in relation to the adoption of a child.

Highlighted Provisions:

This bill:

- ▶ provides that if the birth mother has not resided in the state for 90 total days or more:
 - the birth mother shall file a declaration regarding each potential birth father with the court;
 - the court may, based on the declaration regarding the potential birth father, order the birth mother to serve a potential birth father notice that she intends to consent to adoption or relinquishment of the child for adoption; and
 - the potential birth father's consent is required, in accordance with certain provisions of the Adoption Act.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **78B-6-110**, as last amended by Laws of Utah 2013, Chapter 458

29 ENACTS:

30 **78B-6-110.5**, Utah Code Annotated 1953

31

32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **78B-6-110** is amended to read:

34 **78B-6-110. Notice of adoption proceedings.**

35 (1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a
36 sexual relationship with a woman:

37 (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding
38 the child may occur; and

39 (ii) has a duty to protect his own rights and interests.

40 (b) An unmarried biological father is entitled to actual notice of a birth or an adoption
41 proceeding with regard to his child only as provided in this section or Section 78B-6-110.5.

42 (2) Notice of an adoption proceeding shall be served on each of the following persons:

43 (a) any person or agency whose consent or relinquishment is required under Section
44 **78B-6-120** or **78B-6-121**, unless that right has been terminated by:

45 (i) waiver;

46 (ii) relinquishment;

47 (iii) actual consent, as described in Subsection (12); or

48 (iv) judicial action;

49 (b) any person who has initiated a paternity proceeding and filed notice of that action
50 with the state registrar of vital statistics within the Department of Health, in accordance with
51 Subsection (3);

52 (c) any legally appointed custodian or guardian of the adoptee;

53 (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the
54 petition;

55 (e) the adoptee's spouse, if any;

56 (f) any person who, prior to the time the mother executes her consent for adoption or

57 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with
58 the knowledge and consent of the mother;

59 (g) a person who is:

60 (i) openly living in the same household with the child at the time the consent is
61 executed or relinquishment made; and

62 (ii) holding himself out to be the child's father; and

63 (h) any person who is married to the child's mother at the time she executes her consent
64 to the adoption or relinquishes the child for adoption, unless the court finds that the mother's
65 spouse is not the child's father under Section 78B-15-607.

66 (3) (a) In order to preserve any right to notice, an unmarried biological father shall,
67 consistent with Subsection (3)(d):

68 (i) initiate proceedings in a district court of Utah to establish paternity under Title 78B,
69 Chapter 15, Utah Uniform Parentage Act; and

70 (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i)
71 with the office of vital statistics within the Department of Health.

72 (b) If the unmarried, biological father does not know the county in which the birth
73 mother resides, he may initiate his action in any county, subject to a change in trial pursuant to
74 Section 78B-3-307.

75 (c) The Department of Health shall provide forms for the purpose of filing the notice
76 described in Subsection (3)(a)(ii), and make those forms available in the office of the county
77 health department in each county.

78 (d) When the state registrar of vital statistics receives a completed form, the registrar
79 shall:

80 (i) record the date and time the form was received; and

81 (ii) immediately enter the information provided by the unmarried biological father in
82 the confidential registry established by Subsection 78B-6-121(3)(c).

83 (e) The action and notice described in Subsection (3)(a):

84 (i) may be filed before or after the child's birth; and

85 (ii) shall be filed prior to the mother's:

86 (A) execution of consent to adoption of the child; or

87 (B) relinquishment of the child for adoption.

88 (4) Notice provided in accordance with this section need not disclose the name of the
89 mother of the child who is the subject of an adoption proceeding.

90 (5) The notice required by this section:

91 (a) may be served at any time after the petition for adoption is filed, but may not be
92 served on a birth mother before she has given birth to the child who is the subject of the
93 petition for adoption;

94 (b) shall be served at least 30 days prior to the final dispositional hearing;

95 (c) shall specifically state that the person served shall fulfill the requirements of
96 Subsection (6)(a), within 30 days after the day on which the person receives service if the
97 person intends to intervene in or contest the adoption;

98 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person
99 to file a motion for relief within 30 days after the day on which the person is served with notice
100 of an adoption proceeding;

101 (e) is not required to include, nor be accompanied by, a summons or a copy of the
102 petition for adoption; and

103 (f) shall state where the person may obtain a copy of the petition for adoption.

104 (6) (a) A person who has been served with notice of an adoption proceeding and who
105 wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

106 (i) within 30 days after the day on which the person was served with notice of the
107 adoption proceeding;

108 (ii) setting forth specific relief sought; and

109 (iii) accompanied by a memorandum specifying the factual and legal grounds upon
110 which the motion is based.

111 (b) A person who fails to fully and strictly comply with all of the requirements
112 described in Subsection (6)(a) within 30 days after the day on which the person was served
113 with notice of the adoption proceeding:

114 (i) waives any right to further notice in connection with the adoption;

115 (ii) forfeits all rights in relation to the adoptee; and

116 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in
117 the adoptee.

118 (7) Service of notice under this section shall be made as follows:

119 (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary
120 under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah
121 Rules of Civil Procedure.

122 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court
123 shall designate the content of the notice regarding the identity of the parties.

124 (iii) The notice described in this Subsection (7)(a) may not include the name of a
125 person seeking to adopt the adoptee.

126 (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice
127 is required under this section, service by certified mail, return receipt requested, is sufficient.

128 (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two
129 attempts, the court may issue an order providing for service by publication, posting, or by any
130 other manner of service.

131 (c) Notice to a person who has initiated a paternity proceeding and filed notice of that
132 action with the state registrar of vital statistics in the Department of Health in accordance with
133 the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at
134 the last address filed with the registrar.

135 (8) The notice required by this section may be waived in writing by the person entitled
136 to receive notice.

137 (9) Proof of service of notice on all persons for whom notice is required by this section
138 shall be filed with the court before the final dispositional hearing on the adoption.

139 (10) Notwithstanding any other provision of law, neither the notice of an adoption
140 proceeding nor any process in that proceeding is required to contain the name of the person or
141 persons seeking to adopt the adoptee.

142 (11) Except as to those persons whose consent to an adoption is required under Section
143 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person
144 served to:

145 (a) intervene in the adoption; and

146 (b) present evidence to the court relevant to the best interest of the child.

147 (12) In order to be excused from the requirement to provide notice as described in
148 Subsection (2)(a) on the grounds that the person has provided consent to the adoption
149 proceeding under Subsection (2)(a)(iii), the consent may not be implied consent, as described

150 in Section [78B-6-120.1](#).

151 Section 2. Section **78B-6-110.5** is enacted to read:

152 **78B-6-110.5. Out-of-state birth mothers and adoptive parents -- Declaration**
153 **regarding potential birth fathers.**

154 (1) (a) For a child who is six months of age or less at the time the child is placed with
155 prospective adoptive parents, if, at any point during the time period beginning at the conception
156 of the child and ending at the time the mother executes consent to adoption or relinquishment
157 of the child for adoption, the birth mother or one of the adoptive parents has not resided in the
158 state for 90 total days or more, as described in Subsection (1)(b), the birth mother shall file a
159 declaration regarding each potential birth father with the court, in accordance with this section,
160 before or at the time a petition for adoption is filed with the court.

161 (b) In determining whether the 90-day requirement is satisfied, the following apply:

162 (i) the 90 days are not required to be consecutive;

163 (ii) no absence from the state may be for more than seven consecutive days;

164 (iii) any day on which the individual is absent from the state does not count toward the
165 total 90-day period; and

166 (iv) the 90-day period begins and ends during a period that is no more than 120
167 consecutive days.

168 (2) The declaration regarding a potential birth father that is filed under Subsection (1)
169 shall include, for each potential birth father, the following information:

170 (i) if known, the potential birth father's name, date of birth, social security number, and
171 address;

172 (i) whether the potential birth father was notified of:

173 (A) the birth mother's pregnancy;

174 (B) the fact that he is a potential birth father; or

175 (C) the fact that the birth mother intends to consent to adoption or relinquishment of
176 the child for adoption, in Utah;

177 (iii) each state where the birth mother lived during the pregnancy;

178 (iv) if known, the state in which the child was conceived;

179 (v) whether the birth mother informed the potential birth father that she was traveling
180 to or planning to reside in Utah;

181 (vi) whether the birth mother has contacted the potential birth father while she was
182 located in Utah;

183 (vii) whether, and for how long, the potential birth father has ever lived with the child;

184 (viii) whether the potential birth father has given the birth mother money or offered to
185 pay for any of her expenses during pregnancy or the child's birth;

186 (ix) whether the potential birth father has offered to pay child support;

187 (x) if known, whether the potential birth father has taken any legal action to establish
188 paternity of the child, either in Utah or in any other state, and, if known, what action he has
189 taken; and

190 (xi) whether the birth mother has ever been involved in a domestic violence matter
191 with the potential birth father.

192 (3) Based on the declaration regarding the potential birth father, the court shall order
193 the birth mother to serve a potential birth father notice that she intends to consent to adoption
194 or relinquishment of the child for adoption, if the court finds that the potential birth father:

195 (i) has taken sufficient action to demonstrate an interest in the child;

196 (ii) has taken sufficient action to attempt to preserve his legal rights as a birth father; or

197 (iii) does not know, and does not have a reason to know, that:

198 (A) the mother or child are present in Utah;

199 (B) the mother intended to give birth to the child in Utah;

200 (C) the child was born in Utah; or

201 (D) the mother intends to consent to adoption or relinquishment of the child for
202 adoption in Utah.

203 (4) Notice under this section shall be made in accordance with Subsections
204 [76B-6-110\(7\)](#) through (12).